

**Members:**  
Rep. Mark Kruzan, Chair  
Rep. John Frenz  
Rep. Dale Sturtz  
Rep. Luther Lutz  
Rep. Richard Mangus  
Rep. Thomas Saunders  
Sen. James Merritt, V. Chair  
Sen. Allen Paul  
Sen. Becky Skillman  
Sen. William Alexa  
Sen. James Lewis  
Sen. Timothy Lanane



## **INTERIM STUDY COMMITTEE ON STATE GOVERNMENT ISSUES**

**LSA Staff:**  
John Rowings, Attorney for the Committee  
Anne Haley, Attorney for the Committee  
Susan Preble, Fiscal Analyst for the Committee

**Authority:** Legislative Council Resolution 2-1998

**Legislative Services Agency  
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### **MEETING MINUTES**

Meeting Date: June 23, 1998  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington St.,  
Room 404, House Chamber  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

Members Present: Rep. Mark Kruzan, Chairperson; Rep. John Frenz; Rep. Luther Lutz; Rep. Richard Mangus; Rep. Thomas Saunders; Sen. James Merritt, Vice-Chairperson; Sen. Allen Paul; Sen. Becky Skillman; Sen. William Alexa; Sen. Timothy Lanane.

Members Absent: Rep. Dale Sturtz; Sen. James Lewis.

Rep. Kruzan called the meeting to order at 1:40 p.m. After an introduction of the Committee members, Rep. Kruzan read the charges assigned to the Committee.<sup>1</sup> The Committee discussed additional meeting dates. The second committee meeting was tentatively scheduled for July 28, 1998 at 1:30 p.m. This meeting will focus on the creation of the Department of Indiana Heritage; any time remaining in the meeting will be devoted to the access to public records issue. The third meeting of the Committee was tentatively scheduled for August 25, 1998 at 1:30 p.m. Rep. Kruzan indicated that questions may be directed to his office at (317) 232-9656 or 1-800-382-9842.

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<sup>1</sup>The charges of the Committee are contained in Legislative Council Resolution 98-2 and are as follows:  
"A. Study access to public records, including fee structures for copies of public records. (HCR 15 and SCR 43)  
B. Study the issue concerning the appropriate percentage of signatures that should be required on a petition to change form a town to a city.  
C. Study issues related to the creation of a Department of Indiana Heritage. (SCR 25 and SB 23)."

Rep. Kruzan indicated his view of the public access issue to be addressed by the Committee: (1) denial of public access is a citizen-based problem, not a problem of the media versus the government; (2) the committee proceedings will not involve a wholesale condemnation of public officials; (3) denial of public access is not a partisan issue.

Jeff Modisett, Indiana Attorney General, addressed the Committee concerning public access.<sup>2</sup> Mr. Modisett commended Governor O'Bannon's efforts with regard to this issue. Mr. Modisett discussed his office's efforts to inform the public about the public access laws. Mr. Modisett discussed the following points:

- ▶ There are four basic complaints from the public regarding the open records law: (1) The timeliness of agency responses to requests for records. The timeliness of lawsuits to enforce the law due to the uncertainty of citizens as to how to proceed after a request is denied. (2) The cost of initiating a lawsuit to enforce the law. (3) The discrepancy in copying fees between agencies. (4) The law does not reflect new technology.
- ▶ Other states have compliance boards that act upon complaints against the state and local units for denial of disclosure.
- ▶ There are four available options: (1) Give ombudsmen the authority to receive complaints and issue opinions. (2) Create an administrative board for ombudsmen to present complaints to on an as needed basis. Mr. Modisett and the Committee discussed what other remedies may be available if a complaint is denied by the administrative board or an ombudsman. (3) Set copying fees at the lowest level possible that would still allow agencies to recover costs. (4) Amend the public access laws to address new technology.

Sue Anne Gilroy, Secretary of State, explained her desire for an open model of government, where the public is provided with the technology necessary to obtain easy access to records. She cited as examples of this open model of government, the election division and the corporations division of the Secretary of State's Office which provide computer access to public records. Secretary of State Gilroy discussed her unsuccessful attempt to reduce administrative fees in the last session of the General Assembly. She commented that political partisanship must be set aside in order to resolve the public access issue.<sup>3</sup>

Fred Biesecker, General Counsel to the Office of the Governor, discussed Governor Frank O'Bannon's actions with regard to the open access issue.<sup>4</sup> Mr.

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<sup>2</sup>The general statutory provisions concerning public meetings and public records are located at IC 5-14-1.5 (the open door law) and IC 5-14-3 (access to public records).

<sup>3</sup>Secretary of State Gilroy's comments are on file in the Legislative Information Center, Room 230 of the State House, Indianapolis, Indiana, 46204. The telephone number of the Legislative Information Center is (317) 232-9856.

<sup>4</sup> A copy of a memorandum sent by Governor O'Bannon to agency heads concerning the open records laws is on file in the Legislative Information Center (see footnote 3).

Biesecker discussed the Governor's appointment of a public access counselor and a task force that will hold public hearings around the state.<sup>5</sup> He discussed the Governor's appointment of ombudsmen and his belief that these positions should be made statutory.

Larry Lough, editor of the Star Press in Muncie, discussed the joint investigation performed by Indiana newspapers of local government agency compliance with the open records law. The investigation revealed that investigators posing as regular citizens were often denied access to public records either deliberately or because the unit could not find the records. He recommended training public employees as to the public records law and creating a public access board or committee.<sup>6</sup>

Rep. Kruzan proposed creating three work groups to deal with different aspects of the public access laws: compliance issues, mechanics issues, and fees. He discussed the differences between subcommittees and work groups, indicating that a work group may include persons other than legislators and committee members. Rep. Kruzan recessed the Committee meeting and reconvened it in the House Chamber. Rep. Kruzan called upon three persons to testify that he believed represented different aspects of the access to public records issue.

Charlene Bredemeier recounted her struggles in obtaining access to police department records and other public records. Mrs. Bredemeier described the arrogance and intimidation tactics of public employees and how some public offices unlawfully asked her to disclose the purpose of her record request. She recommended educating public employees about the law and adding penalties for unlawful denial of disclosure. She explained that in other states, public employees and officials are penalized with civil forfeitures that may not be reimbursed by the state. In addition, state attorneys may not defend employees and officials in a lawsuit for denial of disclosure.

Wendy Brant explained the resistance she encountered trying to obtain copies of county attorney claims and other records. She indicated that she eventually received the claims, but was charged \$1 per page for the copies which she successfully contested in court. She explained that one of the problems she faced was the disparity of fees charged by agencies for copies. She discussed a county ordinance that was eventually adopted creating a uniform fee. She pointed out a provision in the ordinance that makes it an infraction for a person who is not authorized by the county to reproduce or deliver information obtained from the county to another person.<sup>7</sup>

Robin Plank described the difficulties she had in obtaining records from a school corporation about the transfer of a teacher to another position within the school corporation.<sup>8</sup> Ms. Plank asserted that the school corporation characterized the action as a transfer rather than a disciplinary proceeding to prevent the public from gaining

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<sup>5</sup>A copy of a press release concerning the appointment of the public access counselor is on file in the Legislative Information Center (see footnote 3).

<sup>6</sup>Mr. Lough's comments are on file in the Legislative Information Center (see footnote 3).

<sup>7</sup> A copy of the ordinance and other documents is on file in the Legislative Information Center (see footnote 3).

<sup>8</sup>A copy of Ms. Plank's testimony is on file in the Legislative Information Center (see footnote 3).

access to the records. In litigation arising from this dispute, the school corporation was found to have violated the open records law, but the court did not award the citizens' attorney fees. Ms. Plank voiced her support for an independent committee to handle complaints and the addition of penalties for unlawfully failing to disclose documents. The Committee discussed the possibility of requiring a person who initiates a lawsuit to compel disclosure to pay attorney's fees and costs if the person loses the lawsuit.

Rep. Kruzan invited members of the public to present brief testimony to the Committee.

Helen Boothe discussed with the Committee her experience in accessing voter registration records, emphasizing the wide disparity between county record systems. Ms. Boothe indicated that penalties should be added for failure to disclose information in violation of the open records law.<sup>9</sup>

Rita Kopala related to the Committee her problem with obtaining access to information from public officials in St. Joseph County concerning a drainage problem on her property. Ms. Kopala produced a transcript of a drainage board meeting.<sup>10</sup>

Kathryn Azhar addressed the Committee about her attempts to inspect and manually transcribe a tape recording of a traffic hearing held in the Noblesville city court. Ms. Azhar played a tape recording she made of her encounters with Judge Caldwell and other public employees as they refused her access to the hearing tape. She described to the Committee how she was harassed and intimidated. Ms. Azhar indicated that despite her many requests, some of which were in writing, she still has not been allowed to inspect the hearing tape.

David Scott Coker described his struggle to access records from a Posey County plan commission. He commented that the public access laws should be drafted in common language. He indicated that all criminal records should be accessible, with an exception for information that would endanger women and children.<sup>11</sup>

Debra Barrett described her efforts to obtain a copy of cellular phone records and budget information from the City of Elkhart. Ms. Barrett indicated that the record request form asked her to state her purpose in requesting the record in violation of the open records law. Ms. Barrett obtained the records by successfully suing the city.<sup>12</sup>

Wendell Hudson explained that he is news director for radio stations in Vincennes. Mr. Hudson described to the Committee how one Indiana court was denying access to probable cause affidavits. Mr. Hudson explained that the court changed its policy after it was educated about the open door law. He also commented on the difficulty in receiving some police reports.<sup>13</sup>

Kathleen Chester indicated that Indiana does a poor job in collecting child

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<sup>9</sup>A copy of Ms. Boothe's testimony is on file in the Legislative Information Center (see footnote 3).

<sup>10</sup> A copy of the transcript of the drainage board meeting is on file in the Legislative Information Center (see footnote 3).

<sup>11</sup> Mr. Coker's comments are on file in the Legislative Information Center (see footnote 3).

<sup>12</sup> A copy of documents pertaining to Ms. Barrett's testimony is on file in the Legislative Information Center (see footnote 3).

<sup>13</sup> Mr. Hudson's testimony is on file in the Legislative Information Center (see footnote 3).

support. She indicated that the open records laws should apply to child support actions.<sup>14</sup>

Charlotte Robertson described her efforts to obtain records including election results for a candidate. She indicated that the cost of the more than one hundred page record was \$1 per page. She indicated that copies ideally should be free or no more than ten cents a page.<sup>15</sup>

James Rodney Martin, a private investigator, related the problems he encountered in obtaining access to the records of a probate estate. He explained that his request for records was denied on the basis that he was making the request at the wrong time, or that the records keeper was on vacation. He explained how one circuit court imposed a dress code upon persons seeking access to records.<sup>16</sup>

Ken Cress described to the Committee how a local board conducts retreats in Indianapolis and does not keep minutes of these meetings. He believes conducting meetings in other cities reduces or eliminates the accessibility for handicapped persons.

Clark Kahlo, Protect Our Rivers Now!, described his difficulties to the Committee in obtaining records from agencies concerning environmental and development issues. Mr. Kahlo described to the Committee some of the reasons public employees have given him for improperly denying him access to public records.<sup>17</sup> Mr. Kahlo indicated that agencies overestimate the cost of reproducing documents.

George Kirkby explained the problems he had in obtaining information from the State Budget Agency. Mr. Kirkby indicated that with the upcoming property tax reform, property tax records need to be more accessible. He suggested making computer terminals available to the public at every county assessor's office. Mr. Kirkby discussed the lack of uniformity among counties in keeping voter records and in making them accessible. He suggested making the records available to the public on CD-ROM.

Rep. Kruzan adjourned the meeting at 4:28 p.m.

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<sup>14</sup> A copy of materials submitted to the Committee by Ms. Chester is on file in the Legislative Information Center (see footnote 3).

<sup>15</sup> A letter from Ms. Robertson to the Committee is on file in the Legislative Information Center (see footnote 3).

<sup>16</sup> A copy of the court's notice is on file in the Legislative Information Center (see footnote 3).

<sup>17</sup> A copy of Mr. Kahlo's comments is on file in the Legislative Information Center (see footnote 3).